

# COUNTY OF LINCOLN Carrizozo, NM 88301





**REQUEST FOR BID #17-18-001**  
**Lincoln County**  
**Hondo Firestation**

For Contracting Agency: County of Lincoln, New Mexico

Contact Person: Orlando Samora

Address: 300 Central Ave./ PO Box 711

City/State/Zip Carrizozo, NM 88301

Telephone: (575) 648-2385 ext. 105 Fax: (575)648-4182 E-Mail: [osamora@lincolncountynm.gov](mailto:osamora@lincolncountynm.gov)

**DEADLINE FOR RECEIPT OF BIDS IS AS FOLLOWS:**

DATE: December 14 2017 TIME: 2:00 p.m. **MDT**

DELIVER TO: Orlando Samora, 300 Central Ave., Carrizozo, NM 88301

Late Bids will not be accepted. It is the responsibility of the Offeror to ensure that Bids are delivered on time to the correct electronic website or County address stated in the solicitation.

A PRE-BID CONFERENCE will XX will not     be held as follows:

DATE: November 29, 2017 TIME: 10:00 a.m. **MDT**

LOCATION: 0.65 Miles NW of the intersection of Highway 70 and Highway 380

CITY/STATE/ZIP Hondo New Mexico

*Note: Any unauthorized change to the language or forms issued in this Project Manual or identified in any addenda shall render your Bid 'nonresponsive.'*

County of Lincoln New Mexico

**PROJECT BID DOCUMENTS**  
Drawings and Specifications  
for  
**The Lincoln County Hondo Fire Station**

**A. PROJECT DEPOSIT INSTRUCTIONS**

Bid Documents may be obtained at Albuquerque Reprographics upon payment of **\$100.00** for each complete set. CHECKS SHOULD BE MADE PAYABLE TO “**The County of Lincoln**”. Incomplete sets will not be issued. The successful Offeror will receive refund of his deposit, and any unsuccessful Offeror who returns the Bid Documents in good and complete condition within fifteen (15) days of the Bid Opening will also receive refund of this deposit. General contractors are limited to two (2) copies; sub-contractors limited to one (1) copy. No deposits will be returned after the fifteen-day period.

**B. LOCATIONS TO REVIEW PROJECT BID DOCUMENTS:**

1. Dodge Reports, 1615 University Boulevard NE, Albuquerque, NM 87102 Telephone: (505) 243-2817
2. Reed Construction Data (CMD), 3351 Candelaria, NE, Suite D, Albuquerque, NM 87107 Telephone: (505) 881-8590
3. Builder's News and Plan Room, 3435 Princeton Drive NE, Albuquerque, NM 87107 Telephone: (505) 884-1752
4. Construction Reporter, 1609 Second Street NW, Albuquerque, NM 87102 Telephone: (505) 243-9793
5. Plan-it Room, 1155 Westmorland Dr. #102, El Paso TX 79925 Telephone: (915) 781-2900
6. Contractor's Weekly, 3750 Duranzo Ave. El Paso TX 79905 Telephone: (915) 276-8289

**C. PROJECT PRICE BID:**

Price Bids shall be presented in the form of a total Base Bid under a Lump Sum Contract plus any alternates per the Bid Form (Section 00 4113) and Alternates (Section 01 2300) as selected by the Owner. A Bid must be submitted on all Bid items, allowances and alternates; segregated Bids will not be accepted.

**NOTE:** Bid price shall not include state gross receipts or local options taxes. Taxes will be included in the Contracted Amount at prevailing rates as a separate item to be paid by Owner.

In submitting this Bid, each Offeror must satisfy all terms and conditions of the Bid Documents. All work covered by this Invitation to Bid shall be in accordance with applicable state laws and, if price Bid amount is \$4,250 or more, is subject to the minimum wage rate determination issued by the office of the NM Work Force Solutions Department for this project. If the price Bid amount of the contractor or any subcontractor exceeds \$4,250, the contractor and/or subcontractor must comply with the registration requirements pursuant to the NM Work Force Solutions Department Registration Act.

#### **D. PROJECT BID SECURITY**

If Offeror Bid price is greater than \$25,000, Offeror shall provide Bid security in the form of a surety bond executed by a surety company authorized to do business in the State of New Mexico in the amount of **5%** of the total price Bid, or the equivalent in cash by means of a cashier's check or in a form satisfactory to the Owner, must accompany each price Bid in accordance with the Instructions to Offerors.

A 100% Performance Bond and a 100% Payment and Materials Bond executed by a surety company authorized to do business in the State of New Mexico shall be required from the successful Offeror prior to award of contract. The Performance and Labor and Materials Payment Bonds shall be AIA Document A312. The amount of the Bonds shall be the Bid price exclusive of gross receipts tax.

The AIA A312 1984 Labor and Materials Payment Bond shall in effect, limit the time line Surety has to respond. The bond shall be modified as follows:

“Paragraph 6 of this Payment Bond is deleted in its entirety and replaced with the following provision: Within 45 days (1) after the claimant has satisfied the conditions of Paragraph 4 and (2) after the Surety has received at its home office all supporting documentation it requested to substantiate the amount of the claim, the Surety shall pay or arrange for payment of any undisputed amounts. Failure of the Surety to satisfy the above requirements shall not be deemed a forfeiture or waiver of the Surety’s or the Contractor’s defenses under this Bond or their right to dispute such claim. However in such event the claimant may bring suit against the Surety Company and provided under this Bond.”

#### **E. COMPLETION TIME AND LIQUIDATED DAMAGES:**

The Bid Documents contain a time for completion of the work and further impose liquidated damages for failure to complete the work within the stated time period. No Offeror may withdraw his Bid for **45 days** after the actual date of the opening thereof.

#### **F. METHOD OF AWARD:**

The Owner intends to award this Project to the lowest bid Offeror in accordance with the Request For Bid requirements. The Owner reserves the right to reject any and all Bids, to waive technical irregularities, and to award the contract to the Offeror whose Bid it deems to be in the best interest of the Owner.\*

**\*NOTE: Please read all of the RFB documents carefully for mandatory requirements.**

**G. FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

The agreement for the work shall be the AIA Standard Form of Agreement Between the Owner and Contractor, with deletion of arbitration provisions, and General Conditions, 2010 Version 3.1, with the basis of payment as a Stipulated Sum.

## I. PROJECT INFORMATION

### A. PURPOSE OF THIS BID

Pursuant to the NM Procurement Code governing the competitive sealed Bid process for construction, more specifically 13-1-102, NMSA 1978, 1.4.1.13 through 1.4.1.1.28, the County has made a determination that the use of the competitive sealed bidding method of procurement is advantageous for this project.

Award shall be made in accordance with the terms, conditions, and requirements stated herein. Award shall be made on the basis of low bid inclusive of accepted alternates as determined by the Owner upon review of the bids.

### B. PROJECT FUNDING

The County of Lincoln, NM has funds to administer this project and will be referred to throughout the contract documents as "Owner".

### C. PROJECT DESCRIPTION

The project is described as:

1. Lincoln County purchased and is in possession of a prefabricated metal building. The building pieces are currently being stored on the site where it is to be erected. The drawings for this building are included as a part of this bid set. This project is for the erection of this prefabricated metal building plus the following:
  - a. Sitework including removal of existing fencing, concrete pads, a flagpole (to be reinstalled); the Owner will clear and grub the site plus over-excavation; this project to provide engineered fill plus re-compaction for building foundations, grading and drainage, gravel and concrete work as indicated within the drawings.
  - b. Interconnection of the prefabricated metal building utilities including water, power and sewer.
    - 1) Owner to provide installation of new pump (if required) and piping from existing well located on site to 5' from new prefabricated metal building. Contractor to interconnect water to tank with fire pump and to building domestic and fire water.
    - 2) Contractor to contact local power utility provider and coordinate installation of service to new prefabricated metal building.
    - 3) Owner to hire septic company to install a fully functional septic system in the location identified within the drawings and provide interconnection point within five feet of prefabricated metal building.
    - 4) Owner to provide coordination with Phone company for service to the building; contractor responsible for distribution within building.
  - c. Interior buildout of the new prefabricated metal building as indicated within the Construction Documents included within this bid package.

### D. PROJECT CONTACTS

Any questions concerning the selection process for this Request for Bids shall be submitted to the Purchasing Agent listed below. Technical questions regarding the scope of work shall be submitted to the Design Professional of record, and if appropriate, to the County Representative.

For questions regarding the selection process:

**Procurement Contact Name:** Orlando Samora  
**Address:** 300 Central Ave. / PO Box 711  
**City/State/Zip:** Carrizozo, NM 88301  
**Phone Number:** (757) 648-2385 Ext. 105

For technical questions regarding the scope of work, drawings and specifications:

Susan Johnson  
Fanning Bard Tatum Architects AIA Ltd.  
6501 Americas Parkway NE Suite 300  
Albuquerque, NM 87110  
(505) 883-5200

#### **E. PROJECT PLANNING SCHEDULE**

Key project planning schedule milestones are:

Tentative Notice of Award	January 15, 2018
Anticipated Substantial Completion	May 15, 2018

#### **F. SUMMARY SCOPE OF SERVICES**

A summary of services the General Contractor shall perform to complete the Project, include, but are not limited to, the following:

- a. Planning, supervision and timely completion of the Project
- b. Prepare, monitor, and maintain Project schedule
- c. Material procurement, delivery, and storage
- d. Submittals and Project documentation
- e. Manage construction labor and materials
- f. Coordinate with Owner direct labor, subcontractors, and Owner furnished equipment suppliers, if applicable
- g. Manage site access, safety, security, and quality control
- h. Manage testing, inspections
- i. Coordination of all utility inspections
- j. Project close-out and warranty period

#### **G. DEFINITIONS AND TERMINOLOGY**

This section contains definitions that are used throughout this Request for Bids (RFB), including appropriate abbreviations.

“**Architect**” means a member of the project team who is a New Mexico licensed architect and is responsible for the architectural services.

**“Award of Contract”** shall mean a formal written notice by the County that a firm has been selected to enter into negotiations for a contract for construction services.

**“Construction Industries Division – licensing treatment of general and limited partnerships and joint ventures.**

(1) General partnerships are to be separately licenses when the partnership is bidding for and performing the work, provided that partnerships are legally authorized to do business in NM in order to be licensed but not requiring that they be separately licensed, see 14.6.3.8 (B)(3) NMAC.

(2) Limited partnerships are required to be separately licenses even though one or more of its partners holds a license or qualifying party certificate (14.6.3.8(B)(1) NMAC.

(3) Joint ventures must be separately licensed per 14.6.3.8(B)(2)(a) NMAC. No two or more persons shall submit a joint bid or jointly engage in contracting unless operating as a validly licensed joint venture.

**“Construction Contractor”** means successful Offeror awarded the contract that holds a current State of New Mexico general contractor license designation of GB-98.

**“Contract”** means an agreement between a state agency or school district and a New Mexico licensed contractor for the work covered by this RFB.

**“Contract Documents”** means any one, or combination, of the following documents: Agreement Between the Owner and the General Contractor for Construction, General Conditions of the Contract for Construction, and the drawings and specifications.

**“Contractor”** means any person, corporation, or partnership that has entered into a contract with a state agency or a local public body.

**“Design Professional”** means architect or engineer.

**“Determination”** means the written documentation of a decision of the County and/or the Selection Committee, including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

**“Limited partnership”** is formed upon the filing of a certificate of limited partnership with the Secretary of State. Limited partnership shall state whether partners are general or limited. General partners are agents of the limited partnership, may manage the limited partnership, and may be held liable for the limited partnership’s obligations.

**“Joint venture”** is a partnership formed for a single transaction. As a partnership, it can be created without a formal, written agreement meeting (1) a community of interest in the performance of a common purpose; (2) a joint proprietary interest in the subject matter, (3) a mutual right to control, (4) a right to share in the profits, and (5) a duty to share in any losses which may be sustained.

**“Offeror”** is any person, corporation, or partnership who chooses to submit a Bid in response to this RFB.

**“Owner”** is the County of Lincoln, NM.

**“Partnership”** is an ‘association of two or more persons who become co-owners of a business for profit per NMSA 1978 54-1A-202(a) 1996. Note: When forming a partnership, written partnership agreements are not required. ‘In a ‘general partnership’ each partner is an agent of and may bind the partnership unless the partnership has limited that partner’s authority.

**“Bid”** is the Offeror’s response to this RFB.

**"Request for Bids" or "RFB"** means all documents, attached or incorporated by reference, used for soliciting Bids for this project.

**"Resident Business", "Resident Contractor" or "Resident Veteran"** means an entity that has a valid resident certificate issued by the NM Taxation and Revenue Department pursuant to Section 13-1-22 NMSA 1978.

**"RFB Documents"** means any one, or combination, of the following documents: Request for Bid, technical Bid, price proposal, contractor qualification statement, subcontractor qualification statements, Price Proposal.

**"Responsible Offeror"** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal.

**"Responsive Offer" or "Responsive Proposal"** means an offer or proposal, which conforms in all material respects to the requirements set forth in the RFB. Material respects of a RFB include, but are not limited to quality, quantity or delivery requirements.

**"Selection Committee or Evaluation Committee"** means a body constituted in accordance with Section 13-1-121 NMSA 1978 and 1.4.8.16 NMAC 2005 to perform the evaluation of Offeror proposals and make a recommendation for selection (short list) or final selection recommendation to the governing body. The Evaluation Committee consists of a minimum of three members, should collectively possess expertise in the technical requirements of the project, construction design and contracting.

**"Statement of Qualifications Forms"** means the forms included as part of this RFP, which all Offerors shall complete, including the qualification for the team member or partners and subcontractors proposed for the project.

**"Technical Irregularities"** are matters of form rather than substance evident from the Offeror proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the Evaluation Committee may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the Owner. Examples include, but are not limited to the failure of the Offeror to:

- a) Submit the number of signed proposals required by the RFB
- b) Sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or
- c) Acknowledge receipt of an amendment to the RFB, but only if: (1) it is clear from the proposal that the Offeror received the amendment and intended to be bound by its terms; or (2) the amendment involved had no effect on price, quality or quantity.

**Note:** A technical irregularity can be waived if the irregularity does not affect quality, price, or time elements of the project.

**"User"** means the staff occupying the facility or facilities, for which a project is being designed.

**"User Contact"** is the person designated by the County to speak on behalf of the staff concerning the scope of work and programming requirements for the project.

**"Veteran Preference"** see 'Resident Business, Resident Contractor or Resident Veteran' above

a) Through either an RFB process or an ITB process the qualified veteran resident contractor shall receive:

10% preference if their annual revenues are less than \$1,000,000;

8% preference if their annual revenues are less than \$5,000,000 but more than \$1,000,000

7% preference if their annual revenues are more than \$5,000,000

b) If there is a joint bid or joint proposal by a combination of resident veteran, resident or nonresident businesses, the preference shall be calculated in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by each business as specified in the joint bid or proposal.

c) The preference is limited in any calendar year, to an aggregate of \$10,000,000 in purchases by public bodies from all resident veteran businesses receiving preferences.

d) The preferences do not apply when the expenditure includes federal funds for a specific purchase.

e) The veteran resident contractor shall provide documentation to validate the % of preference to be awarded.

The terms **"must," "shall," "will," "is required,"** or **"are required"** identify *a necessary* item or factor. Failure to comply *with such* an item or factor *may* result in the rejection of the Offerors proposal.

The terms **"can," "may," "should," "preferably,"** or **"prefers"** identifies a desirable or discretionary item or factor. Failure to comply with such an item or factor *may* result in the rejection of the Offerors proposal. *Rejection of the proposal will be subject to review by the Selection Committee and the final decision on rejection will be made by the Committee Chairman.*

## **H. PROCUREMENT LIBRARY**

The Purchasing Agent has established a Procurement Library. Offerors are encouraged to review the material contained in the Procurement Library by accessing the documents available on line. The documents are located on the NM State Purchasing Division website as follows:

<http://www.generalservices.state.nm.us/statepurchasing/>

**NM Procurement Code, Chapter 13 Public Purchases and Property**

**GSD Procurement Regulations, 1.4.1 NMAC**

**RFB for Construction, Maintenance Services and Repairs, 1.4.8 NMAC**

**NM Government Conduct Code**

## **II. CONDITIONS GOVERNING THE PROCUREMENT**

This section of the RFB outlines and describes the major events of the selection process and the conditions that govern this procurement.

## A. SEQUENCE OF EVENTS

	<b>Action</b>	<b>Responsibility</b>	<b>Date</b>
1.	Issue Bid Documents	County	11/22/2018
2.	Pre-Bid Conference Location: 0.65 mile NW of intersection Hwy 70 and 380 on 380 Note: Mandatory	County Time: 10:00 a.m.	11/29/2018
3.	Deadline to Submit Written Questions re: RFB Process	Potential Offerors	12/6/2018
4.	Response to Written Questions re: RFB Process and Addendum	County	12/11/2018
5.	Date of Release of Last Addenda Prior to Submission of Bid	Design Professional	12/11/2018
6.	Submission of Bid	Offerors Time: 2:00 p.m.	12/14/2018
7.	Bid Evaluation	Evaluation Committee	TBD
8.	Issue Notice of Intent to Award & Recommendation of Award to Governing Board	Design Professional & Purchasing Agent	TBD

## **B. EXPLANATION OF SEQUENCE OF EVENTS**

### **1. Issue Bid Documents**

These Bid Documents are issued by the County in accordance with the provisions of Sections 13-1-102 NMSA 1978, General Government Administration Procurement Regulations NMAC 1.4.1.13 through 1.4.1.28.

### **2. Pre-Bid Conference**

This is the date and time of the meeting to review the Site, Bid documents, including the Scope of Work, Response Format, Schedule, and Price Bid requirements.

### **3. Deadline to Submit Written Questions regarding the RFB Process**

This is the date and time set for submitting written questions regarding the RFB document and procurement process to the Purchasing Agent. Note: questions regarding the drawings and specifications shall be directed to the Design Professional.

### **4. Response to Written Questions to RFB Process and Addendum**

This is the date and time set by the Purchasing Agent to issue a response to written questions regarding the RFB procuring document or the procurement process. The Purchasing Agent will coordinate this response with the Design Professional to be included in the issuance of addenda, if applicable.

### **5. Date of Release of Last Addenda Prior to Submission of Bids**

This is the date that has been set by the Design Professional that signifies no other addenda will be issued on the project so that Offerors have time to finalize their responses.

### **6. Submission of Bids**

This is the date and time that has been set for the submission of Bids. Late Bids *will not* be accepted. It is the Offeror's responsibility to ensure that Bids arrive at the appointed date and time. Bids may be delivered early to avoid any possible delay of the submission. The documents shall be in a sealed container with the RFB number and opening date indicated on the bottom left hand side of the container as follows:

#### **The County of Lincoln**

**Attn: Orlando Samora, Purchasing Agent**

**If Mailed:** PO Box 711, Carrizozo, NM 88301

**If Hand Delivered:** 300 Central Avenue, Carrizozo, NM 88301

**Purchasing Agent Phone Number:** (575) 648-2385, ext 105

#### **Number RFB and Name of Project**

**BIDS RECEIVED AFTER THE DEADLINE SHALL BE CONSIDERED NON-RESPONSIVE.** Bid submittals shall be date and time-stamped by the County office that is designated to receive Bids. A public log will be kept of the names and submittal times of all Offerors who submitted Bids.

The Purchasing Agent shall open the Bids, review for completeness and compliance with the mandatory requirements and read aloud. If any Bid submitted is deemed non-responsive, the Offeror will be notified in writing of such determination which will include the right of the Offeror to protest the decision. (See Section II.C.1.). The Purchasing Agent shall designate a witness to be

present during the opening the Bids. The witness and Purchasing Agent shall sign the "List of Offerors" for the procurement file.

**7. Bid Evaluation**

This is the date and time that the Evaluation Committee will convene to discuss the bids and associated alternates.

**8. Issue Notice of Intent to Award**

The Design Professional shall prepare the Notice of Intent to Award a contract to the low bidder and accepted alternates. The Purchasing Agent shall prepare a procurement report and a recommendation to the County for award of the Project.

**9. Contract Negotiations**

The Owner reserves the right to enter into negotiations with the lowest bid Offeror per NMSA 13-1-115. If contract negotiations are not finalized within a reasonable period of time, the Owner will conclude negotiations with the selected firm and begin negotiations with the next lowest bidder.

**10. Issue Notice of Award, Prepare Contract**

Upon the successful completion of contract negotiations and County approval, the Architect shall issue the Notice of Award and prepare the Contract for Construction.

**11. Protest Deadline**

The protest period for **award** of the contract shall begin the day after the date of the Notice of Award. This date shall be determined by the Purchasing Agent. See Section C, Paragraph 1, below for more detail.

**C. STANDARD CONDITIONS GOVERNING THE PROCUREMENT**

The Standard Conditions section contains statutory guidelines under which this RFB is issued, and conditions concerning how the project will be completed.

The Owner may evaluate the Bids based on the anticipated completion of all or any portion of the Project. The Owner reserves the right to divide the Project into multiple parts, to reject any and all Bids and re-solicit for new Bids, or to reject any and all Bids and temporarily or permanently abandon the Project, should the need arise. Owner makes no representations, written or oral, that it will enter into any form of agreement with any Offeror.

**1. Protests**

In accordance with Section 13-1-172 NMSA 1978, any Offeror who is aggrieved in connection with the solicitation of a contract or the award of a contract may protest to the Purchasing Agent or his/her Designee. The protest must be submitted **in writing** within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise to the protest to:

**Attn: Orlando Samora, Purchasing Agent**  
PO Box 711, Carrizozo, NM 88301  
(575) 648-2385, ext 105

The protest letter shall include the name and address of the protestant, the solicitation number, and a statement of the grounds for protest, including appropriate supporting exhibits.

**2. Incurring Cost**

Any cost incurred by the Offeror in preparation, transmittal, or presentation of any Bid or material submitted in response to this RFB shall be borne solely by the Offeror.

**3. Third-Party or Subcontracting GC Contract Responsibilities**

Direction of all work that may result from this procurement must be performed by the Offeror and payments will only be made to the Offeror. Use of consultants identified in the Bid is permitted, but since the award is made on a lowest bid process, reassignment of GC duties and responsibilities to a third party is not acceptable.

**4. Mistakes in Bids:**

Per 1.4.1.23

- A. Consideration for award. Bids shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in 1.4.1.14 through 1.4.1.28 NMAC of this rule.
- B. General principles. Correction or withdrawal of a bid because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent authorized in 1.4.1.14 through 1.4.1.28 NMAC of this rule.
- C. Mistakes discovered before opening. A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in 1.4.1.20 NMAC of this rule.
- D. Confirmation of bid. When the procurement officer knows or has reason to conclude that a mistake has been made in the low bid, the procurement officer should request the low bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the low bid or a bid unreasonably lower than the other bids submitted. If the low bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in Subsection E of this section are met.
- E. Mistakes discovered after opening. This subsection sets forth procedures to be applied in three situations in which mistakes in bids are discovered after the time and date set for bid opening.
  - (1) Technical irregularities. Technical irregularities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, when there is no effect on price, quality or quantity. The procurement officer may waive such irregularities or allow the low bidder to correct them if either is in the best interest of the state. Examples include the failure of the low bidder to:
    - (a) return the number of signed bids required by the IFB;
    - (b) sign the bid, but only if the unsigned bid is accompanied by other material indicating the low bidder's intent to be bound; or
    - (c) acknowledge receipt of an amendment to the IFB, but only if:
      - (i) it is clear from the bid that the low bidder received the amendment and intended to be bound by its terms; or
      - (ii) the amendment involved had no effect on price, quality or quantity.
  - (2) Mistakes where intended correct bid is evident. If the mistake and the intended correct bid are clearly evident on the face of a bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of a bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors. It is emphasized that mistakes in unit prices cannot be corrected.

(3) Mistakes where intended correct bid is not evident. A low bidder alleging a material mistake of fact which makes the bid non-responsive may be permitted to withdraw the bid if:

(a) a mistake is clearly evident on the face of the bid document but the intended correct bid is not; or

(b) the low bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

(4) Written determination. When a bid is corrected or withdrawn, or a correction or withdrawal is denied, the procurement officer shall prepare a written determination showing that the relief was granted or denied in accordance with this section.

#### **5. Late Withdrawals or Late Modifications**

Per 1.4.1.21 NMAC, submission of a request to withdraw or modify a Bid after the deadline, shall be documented, and shall not be considered unless the written request is received before contract award, and the request to submit, modify or withdraw the Bid would have been timely but for the action or inaction of the Purchasing Agent and/or County personnel directly involved in the procurement.

Any of these occurrences shall be documented by the Purchasing Agent, and all Offerors of record shall be notified of the event in writing as soon as possible.

#### **6. Confidential Data**

If a request is received for disclosure of data, for which an Offeror has made written request for confidentiality, the Purchasing Agent shall make a determination that the data is, in fact, confidential and proprietary financial information concerning the Offeror's organization and whether or not the data qualifies as a trade secret under the Uniform Trade Secrets Act, Sections NMSA 1978 57-3A-7. Unless the Offeror takes legal action to prevent disclosure of data that does not meet the requirements of the Uniform Trade Secrets Act, the data will be so disclosed. After award the Bid shall be open to public inspections subject to any continuing prohibition on the disclosure of confidential data. Any pages of a Bid on which the Offeror has stamped or imprinted "proprietary" or "confidential" shall be readily separable from the Bid in order to facilitate public inspection for the non-confidential portion of the qualifications based Bid.

#### **7. Termination**

This RFB may be canceled at any time and any and all Bids may be rejected in whole or in part when the County determines such action to be in the best interest of the County and the State of New Mexico.

#### **8. Sufficient Appropriation**

Any contract awarded as a result of this RFB process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The Owner's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

If the determination is made that there is insufficient funding to continue or finalize a project, the successful Offeror will be compensated to the level of effort performed, as authorized by the Owner prior to that determination.

#### **9. Right to Waive Minor Irregularities**

The Selection Committee reserves the right to waive minor irregularities per 1.4.1.42 NMAC 2005 (see Definitions). The Selection Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive Bids failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Selection Committee.

**10. Notice**

The New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

**11. Release of Information**

Only the Owner is authorized to release information about the project(s) covered by this RFB. The Offerors must refer to the Owner any requests to release any information that pertains to the work or activities covered by any action or award related to this RFB.

**12. New Mexico Prevailing Wage Rates**

Wages to be paid as a result of a contract awarded for this project will be subject to the minimum wage rate determination by the State of New Mexico, and will be attached to the final contract documents. This determination will become part of the contract by reference and must be posted, per State of New Mexico Statutes, in a conspicuous place at the General Contractor's place of business. It is the General Contractor's responsibility to be aware of the applicable State of New Mexico statutes and responsibilities related thereto. Failure by the Owner to physically make such minimum wage rate determinations available to the General Contractor will not relieve the General Contractor from becoming aware of or complying with such determinations.

**13. Licensing Requirements**

The Contractor and subcontractors shall comply with all licensing regulations and the Contractor shall provide copies of all valid licenses necessary to perform the work in the State of New Mexico.

**14. Subcontractors**

The Subcontractors Fair Practices Act, 13-4-31 et. seq. per NMAC 1.4.8.13, para. C applies to this procurement. Therefore, any request for substitution on the part of the Owner or the Offeror shall comply with this section.

## PRICE PROPOSAL

**(Provide One Original Copy of Below Information in Sealed container clearly marked on the outside of container the RFB#, Project Name and Name of General Contractor.**

1. **Bid Form**— use the Lump Sum Bid form provided in the project manual. Price shall not include NM Gross Receipts Tax. However, the GRT will be added to the contract.

**NOTE:** If a joint Bid is being submitted, be sure you have stated the % of the work/services that will be performed the nonresident contractor based on the dollar amount of the fee proposed and include your valid in-state preference number.

Veteran Resident Contractor Preference Number: \_\_\_\_\_ % of  
preference qualified for: \_\_\_\_\_ (10% / 8% / 7%).

NOTE: Attach a copy of the valid certificate and documentation to validate % preference to the Price Bid.

2. **ANY ALTERNATES OR BID LOTS LISTED** must be clearly identified by cost.
3. **STATE OF NEW MEXICO W-9**
4. **COMBINED LIST OF SUBCONTRACTORS AND ASSIGNMENT OF ANTITRUST CLAIMS** use form provided in the project manual.
5. **AGENT'S AVIDAVIT**
6. **BID BOND**
7. **CERTIFICATE OF INSURANCE**
8. **POWER OF ATTORNEY**
9. **LICENSES, PREFERENCE, REGISTRATION, AND ANY OTHER NUMBERS REQUIRED ON THE BID FOR**
10. **CAMPAIGN CONTRIBUTION FORM**

**BID FORM**  
Lump Sum

Project: **Hondo Fire Station**

IFB No. **#17-18-001**

Bidder:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This BID is submitted to:

County of Lincoln  
PO Box 711  
300 Central Avenue  
Carrizozo, NM 88301  
Attn: Orlando Samora

1.0 The undersigned Bidder proposes and agrees, if this BID is accepted, to enter into an agreement with the Owner in the form included in the BIDDING Documents to perform and furnish all Work as specified or indicated in the BIDDING Documents for the Contract Price and within the Contract Time indicated in this BID and in accordance with the other terms and conditions of the Contract Documents.

2.0 The Bidder accepts all of the terms and conditions of the Invitation for BID and Instructions to Bidders, including without limitation those dealing with the disposition of BID security and other BIDDING Documents. This BID will remain subject to acceptance for **45 days** after the day of BID opening. The Bidder shall sign and submit the Agreement between Owner and Contractor (hereinafter called Agreement) with the bonds and other documents required by the BID Requirements within 15 calendar days after the date of the Owner's Notice to Award.

3.0 In submitting this BID, the Bidder represents, as more fully set forth in the Agreement, that:

A. The Bidder has examined copies of all the BIDDING Documents and of the following Addenda (receipt of all of which is hereby acknowledged):

No. \_\_\_\_\_ Dated \_\_\_\_\_

B. The Bidder has familiarized himself with the nature and extent of the BIDDING Documents, Work, site, locality, and all local conditions, laws,

and regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.

C. The Bidder has carefully studied all reports and drawings of subsurface conditions which are identified in the Information Available to Bidders and accepts the determination set forth in the Information Available to Bidders of the extent of the technical data contained in such reports and drawings upon which the Bidder is entitled to rely.

D. The Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the BID Documents.

E. The Bidder has given the Owner/Architect written notice of all conflicts, errors, and discrepancies that he has discovered in the BIDDING Documents, and the written resolution thereof by the Owner/Architect is acceptable to the Bidder.

F. This BID is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; the Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham BID; the Bidder has not solicited or induced any person, firm, or corporation to refrain from BIDDING; and the Bidder has not sought by collusion to obtain for himself any advantage over any other Bidder or over the Owner.

**G. The Bidder acknowledges that he has attended any mandatory pre-BID conference scheduled by the Owner and/or the Owner/Architect pertaining to this project.**

H. The Bidder agrees to show clearly on the envelope in which the BID is submitted the Project Name and Number, as well as Invitation for BID Number.

I. The Bidder will complete the Work for the following price(s) which do not include any gross receipts tax in the price(s):

4.0 BIDs shall be presented in the form of a total Base BID under a lump sum contract plus any additive or deductive alternates that are selected by the Owner. A BID must be submitted on all BID items and alternatives. The Owner will not select segregated BIDs.

A. **LUMP SUM PRICE** - Base BID (please use typewriter or print legibly) (use words):

\_\_\_\_\_

\_\_\_\_\_

(\$ \_\_\_\_\_ )

All specific cash allowances are included in the price(s) set forth above.

B. DEDUCTIVE ALTERNATE 1: Delete Amulance Bay

Omit partition type "A" surrounding the "Ambulance Bay" as defined on drawings. Omit Door 110B. Omit two light fixtures in Ambulance Bay and redistribute remaining lots. Omit unit heater for Ambulance Bay. (\$ \_\_\_\_\_ )

C. DEDUCTIVE Alternate 2: Interior Build Out

Delete build out of interior meeting, office, bathrooms, Janitor and kitchenette in their entirety. Provide water, sanitary and power rough-ins only except at Janitor's Sink. Provide Janitor's Sink with water and sanitary only. All interior partition walls, doors, ceilings, mechanical distribution beyond a sidewall diffuser from the mechanical unit to be omitted.

(\$ \_\_\_\_\_ )

D. DEDUCTIVE ALTERNATE 3: Mezzanine Build Out

Construct steel frame structure plus metal deck for mezzanine only. Omit stair, concrete and railing for mezzanine. Extend partition type B1 separating the interior meeting, office bathrooms, Janitor and kitchenette with the Open Bay to deck above. Hang all ceiling related items including, but not limited to, ductwork, lights and ceilings from steel frame structure for mezzanine.

(\$ \_\_\_\_\_ )

E. DEDUCTIVE ALTERNATE 4: Over Excavation

Owner to provide site clearing, grubbing and over excavation. Work to be done under the supervision of the General Contractor to confirm extent of over excavation.

(\$ \_\_\_\_\_ )

5.0 The Bidder agrees that:

A. The Work to be performed under this Contract shall be commenced not later than 10 consecutive calendar days after the date of written Notice to Proceed, and that Substantial Completion shall be achieved not later than **120 calendar days** after the date of written Notice to Proceed, except as hereafter extended by valid written Change Order by the Owner.

B. Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified, the Contractor agrees to pay to the Owner in partial consideration for the award of this Contract the amount of **500 Dollars** (\$ 500.00) per consecutive calendar day, not as a penalty, but as liquidated damages for such breach of the Contract.

C. The above prices shall include all labor, materials, removal, overhead, profit, insurance, taxes (not including gross receipts tax), etc., to cover the finished work of the several kinds called for. Changes shall be processed in accordance with the Contract Documents.

D. It is understood that the Owner reserves the right to reject any or all BIDs and to waive any technical irregularities in the BIDDING.

6.0 The following documents are attached to and made a condition of this BID:

- A. BID Bond
- B. BID Security with Agent's Affidavit
- C. Subcontractors Listing & NMDWS Registration form.
- D. Certification of Bidder Regarding Equal Employment Opportunity, Form 950.1
- E. Table A Proposed Subcontracts Breakdown
- F. Table B Estimated Project Workforce Breakdown
- G. Other (list):

7.0 The terms used in this BID and the BIDDING and Contract Documents which are defined in the Conditions of the Construction Contract (General, Supplementary, and Other Conditions), included as part of the BIDDING Documents, have the meanings assigned to them in those Conditions.

8.0 If the Bidder is

A. An **INDIVIDUAL**:

By \_\_\_\_\_  
(Individual's Signature)

doing business as \_\_\_\_\_

Business address: \_\_\_\_\_

\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

[Seal]

**B. A PARTNERSHIP:**

By \_\_\_\_\_  
(Firm Name)

\_\_\_\_\_  
(General Partner's Signature)

Business address: \_\_\_\_\_

\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_ [Seal]

**C. A CORPORATION:**

Corporation Name: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

By: \_\_\_\_\_ Title: \_\_\_\_\_  
(Name of Person Authorized to Sign)

If a New Mexico Corporation: \_\_\_\_\_  
NM Certificate of Incorporation Number

If a Foreign Corporation: \_\_\_\_\_  
NM Certificate of Authority Number

Attest (Secretary): \_\_\_\_\_

Business address: \_\_\_\_\_

\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

**D. A JOINT VENTURE:**

By \_\_\_\_\_  
(Name)

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

By \_\_\_\_\_  
(Name)

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

[Each Joint Venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated in the appropriate category

**BIDDER MUST FILL IN THE FOLLOWING (If none, write none)**

NM License N°.	_____	Classification(s)	_____
Resident Contractor's Preference N°.	_____	Workforce Solutions Dept. Registration N°.	_____



## SUBCONTRACTORS LISTING, NMDWS REGISTRATION, & ASSIGNMENT OF ANTITRUST CLAIMS

Project: \_\_\_\_\_ Project No. \_\_\_\_\_

**1.0 SUBCONTRACTORS LISTING, NMDWS REGISTRATION, & ASSIGNMENT OF ANTITRUST CLAIMS** [by Contractor, Subcontractors, Sub-Subcontractors, and Suppliers]

that such overcharges are passed on to the Owner. It is agreed that the firm retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the Owner, including the right to any treble damages attributable thereto.

1.1 To be fully executed and included with BID as a condition of the BID, including all Subcontractors providing services valued at \$5,000 or more, pursuant to §13-4-34 NMSA 1978.

1.5 A contractor or subcontractor that submits a BID valued at more than \$60,000 for a public works project subject to the Public Works Minimum Wage Act shall be registered with the Labor and Industrial Division of the Workforce Solutions Department (NMDWS) (formerly the Department of Labor (DOL)). The Owner shall not accept a BID on a public works project from a Contractor that does not provide proof of required registration for itself. Contractors, prime contractors and subcontractors must be registered with the NMDWS (§13-4-13.1 NMSA 1978

1.2 To be signed after award of Contract by individual empowered to obligate Supplier, Subcontractor, or Sub-subcontractor.

1.3 See Instructions to Bidders, subsection 4.5 of section 00100, Subcontractors, for rules regarding changes in this list after BIDDING.

1.4 The undersigned agrees that any and all claims which the firm may have or may incur to it for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with the above-referenced project are hereby assigned to the Owner, but only to the extent

Trade (list by trade)                      Firm Name and Address NM Dept. of Workforce Solutions  
Registration No.

\_\_\_\_\_ NMDWS Registration No. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ NMDWS Registration No. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ NMDWS Registration No. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NMDWS Registration No. \_\_\_\_\_

**AGENT'S AFFIDAVIT**

SUPPLEMENTS TO BID FORMS  
Section 00422

**This Form Must  
Be  
Used By Surety**

[To be filled in by Agent]

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and says that he/she is the duly appointed agent for \_\_\_\_\_ and is licensed in the State of New Mexico.

Deponent further states that a certain bond given to indemnify the Owner in connection with the construction of \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, executed by \_\_\_\_\_, Contractor, as principal, and \_\_\_\_\_, as surety, signed by this Deponent; and Deponent further states that said bond was written, signed, and delivered by him/her; that the premium on the same has been or will be collected by him/her; and that the full commission thereon has been or will be retained by him/her.

SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

NOTARY PUBLIC \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_ [Seal]

Agent's Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone ( \_\_\_\_ ) \_\_\_\_\_ Fax ( \_\_\_\_ ) \_\_\_\_\_

[This form must be used for all bonds required in the BIDDING Documents. Power of Attorney for person signing for Surety Company must be attached to bond]



**BID BOND**

**KNOW ALL MEN BY THESE PRESENTS**, that we, the undersigned, \_\_\_\_\_  
as Principal, and \_\_\_\_\_ as Surety, are hereby held and firmly bound unto  
\_\_\_\_\_ as Owner in the penal sum of  
for which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executives,  
administrators, successors and assigns.

**SIGNED**, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

The condition of the above obligation is such that whereas the Principal has submitted to the Owner a certain  
BID, attached hereto and hereby made a part hereof to enter into a contract in writing,  
for (Project)

\_\_\_\_\_  
\_\_\_\_\_

**NOW, THEREFORE,**

- A. If said BID shall be rejected, or in the alternate,
- B. If said BID shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract, attached hereto (properly completed in accordance with said BID) and shall furnish a Bond (BID Security) for the faithful performance of said Contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID.

Then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such BID; and said Surety does hereby waive notice of any such extension.

**IN WITNESS WHEREOF**, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to signed by their proper officers, the day and year first set forth above.

Principal: \_\_\_\_\_ (L.S.)

Surety: \_\_\_\_\_

[Seal]

By: \_\_\_\_\_

## CAMPAIGN CONTRIBUTION DISCLOSURE FORM

### Note: Submit with Price Bid Documents

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a Bid or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

**THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE:**

The following definitions apply:

“Applicable Public Official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed Bid or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive Bid.

“Campaign Contributions” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contributions” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family Member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the Procurement Process” means the time period commencing with the public notice of the request for Bids and ending with the award of the contract or the cancellation of the request for Bids.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed Bid process set forth in the Procurement Code or is not required to submit a competitive sealed Bid because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

**DISCLOSURE OF CONTRIBUTIONS:**

(Note: If you have made more than one contribution, please attach a list of the public officials you have contributed to following the format and attach the list to this document. Please write “see attached” in the blank below.)

Contribution Made By:

---

Relation to Prospective Contractor:

---

Name of Applicable Public Official

Date Contribution(s) Made:

---

Amount(s) of Contribution(s):

---

Nature of Contribution(s):

---

Purpose of Contribution(s)

---

(Attach extra pages if necessary)

---

Signature

---

Date

---

Title (position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

---

Signature

---

Date

Title (position) \_\_\_\_\_

End of RFB Procurement Documents

**AGREEMENT BETWEEN  
THE COUNTY OF LINCOLN AND**

---

This Agreement is made and entered into by and between the County of Lincoln, New Mexico, located at P.O. Box 711, Carrizozo, New Mexico, 88301 hereinafter referred to as "County" and \_\_\_\_\_ hereinafter referred to as "Contractor" and is effective as of the date set forth below upon which it is executed by the Purchasing Agent and the Board of County Commissioners.

**IT IS AGREED BETWEEN THE PARTIES:**

**1. Scope of Work**

The Contractor shall perform the work outlined in the Scope of Work attached hereto as Attachment 1 and incorporated herein by reference.

**2. Compensation**

A. The County shall pay to the Contractor in full payment for services satisfactorily performed at the rate of \_\_\_\_\_ (\$ ), such compensation not to exceed \$ \_\_\_\_\_ excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling \_\_\_\_\_ (\$ ) shall be paid by the County to the Contractor. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses shall not exceed \_\_\_\_\_ (\$ ). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying County when the service provided under this Agreement reach the total compensation amount. In no event will Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

B. Payment is subject to availability of funds pursuant to the Appropriations Article set forth below and to any negotiations between the parties from year to year pursuant to the Scope of Work Article. All invoices MUST be received by County no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If County finds that the services of Contractor are not acceptable, within thirty (30) days after the date of receipt of written notice from Contractor that payment is requested, County shall provide Contractor a letter of exception explaining the defect or objection to the services, and outlining steps Contractor may take to provide remedial action. Upon certification by County that the services have been received and accepted, payment shall be tendered to

Contractor within thirty (30) days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date of postmark. However, County shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. The payment of taxes due for any money received under this Agreement shall be Contractor's sole responsibility and shall be reported under Contractor's federal and state tax identification number(s).

E. Contractor is responsible for submitting to County all copies of invoices showing the wholesale cost of materials utilized in the performance of the duties outlined in the Scope of Work attached hereto. Failure to provide a copy of invoices indicating wholesale costs of materials will result in non-payment of those materials until said invoice(s) is/are provided to County.

### **3. Term**

The term of this Agreement shall be for one (1) year and shall commence upon the date of the final signature. County reserves the right to extend this Agreement, on an annual basis (or a portion thereof) and by mutual agreement, for up to three (3) additional years. Under no circumstances will the term of this Agreement, including any extension thereto, exceed four (4) years, unless terminated pursuant to the Termination Article or the Appropriations Article. In accordance with §13-1-150 (B) NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four (4) years except as set forth in §13-1-150 NMSA 1978.

### **4. Termination**

This Agreement may be terminated by either of the parties hereto upon thirty (30) days' written notice delivered to the other party. Except as otherwise allowed or provided under this Agreement, County's sole liability upon such termination shall be to pay for acceptable work performed prior to Contractor's receipt of the notice of termination, if County is the terminating party, or Contractor's sending the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to Contractor if Contractor become unable to perform the services contracted for, as determined by County or if, during the term of this Agreement, Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of government funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE COUNTY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

### **5. Termination Management**

Immediately upon receipt by either County or Contractor of notice of termination of this Agreement, Contractor shall:

1. Not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of County;
2. Comply with all directives issued by County in the notice of termination as to the performance of work under this Agreement;
3. Take such action as County shall direct for the protection, preservation, retention or transfer of all property titled to County and records generated under this Agreement.

Any non-expendable personal property or equipment provided to or purchased by Contractor with contract funds shall become property of County upon termination and shall be submitted to County as soon as practicable.

## **6. Appropriations**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Board of County Commissioners, this Agreement shall terminate immediately upon written notice given by County to Contractor. County's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final. If County proposes an amendment to the Agreement to unilaterally reduce funding, Contractor shall have the option to terminate the Agreement or to agree to the reduced funding within thirty (30) days of receipt of the proposed amendment.

## **7. Status of Contractor**

Contractor and its agents and employees are independent contractors performing professional services for County and are not employees of the County of Lincoln. Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of county vehicles, or any other benefit afforded to employees of the County of Lincoln as a result of this Agreement. Contractor acknowledges that all sums received hereunder are reportable by Contractor for tax purposes, including without limitation, self-employment and business income tax. Contractor agrees not to purport to bind County unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

## **8. Assignment**

Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of County.

## **9. Subcontracting**

Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of County. No such subcontract shall relieve primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from County. In all cases, Contractor is solely responsible for fulfillment of this Agreement.

**10. Release**

Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the County, its officers and employees, and the County of Lincoln from all liabilities, claims, and obligations whatsoever arising from or under this Agreement.

**11. Product of Service-Copyright**

All materials developed or acquired by Contractor under this Agreement shall become the property of the County of Lincoln and shall be delivered to County no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of Contractor.

**12. Conflict of Interest; Governmental Conduct Act**

A. Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement.

B. Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10 and Article 16, NMSA 1978. Without in anyway limiting the generality of the foregoing, Contractor specifically represents and warrants that:

1. in accordance with §10-16-4.3 NMSA 1978, Contractor does not employ, has not employed, and will not employ during the term of this Agreement any County employee while such employee was or is employed by County and participating directly or indirectly in County's contracting process;
2. this Agreement complies with §10-16-7(B) NMSA 1978 because:
  - a. Contractor is not a public officer or employee of County;
  - b. Contractor is not a member of the family of a public officer or employee of County;
  - c. Contractor is not a business in which a public officer or employee or the family of a public officer of employee has a substantial interest;
  - d. if Contractor is a public officer or employee of County, a member of the family of a public officer or employee of County, or a business in which a public officer or employee of County or the family of a public officer or employee of County has a substantial interest, public notice was given as required by §10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;
3. in accordance with §10-16-8(C) NMSA 1978;
  - a. Contractor is not, and has not been represented by a person who has been a public officer or employee of County within the preceding year and whose official act directly resulted in this Agreement;

- b. Contractor is not, and has not been assisted in any way regarding this transaction by a former public officer or employee of County whose official act, while in County employment, directly resulted in the County making this Agreement;
4. in accordance with §10-16-13 NMSA 1978, Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this §Agreement or any procurement related to this Agreement;
  5. in accordance with §10-16-3 and §10-16-3.3 NMSA 1978, Contractor has not contributed, and during the term of this Agreement shall not contribute anything of value to a public officer or employee of County.

C. Contractor's representations and warranties in paragraphs A and B of the Amendment article are material representations of fact upon which County relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to County if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of the Amendment Article were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of the Amendment Article were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to County and notwithstanding anything in the Agreement to the contrary, County may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in the Amendment Article.

### **13. Amendment**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If County proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provision as set forth in the Termination Article herein, or to agree to the reduced funding.

### **14. Merger**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**15. Penalties for Violation of Law**

The Procurement Code, §§13-1-28 through 13-1-199 NMSA 1978 imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**16. Equal Opportunity Compliance**

Contractor agrees to abide by all federal, state and county laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, Contractor assures that no person in the United States shall, on grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law**

The laws of the State of New Mexico shall govern this Agreement and shall be enforceable in the 12<sup>th</sup> Judicial District Court in the County of Lincoln. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Worker's Compensation**

Contractor agrees to comply with state laws and rules applicable to worker's compensation benefits for its employees. If Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so, this Agreement may be terminated by County.

**19. Records and Financial Audit**

Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by County, the Department of Finance and Administration, and the New Mexico State Auditor and other appropriate state and federal authorities. County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payments.

**20. Disclaimer and Hold Harmless**

County shall not be liable to Contractor or Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold County harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by County in connection with the performance by Contractor of Contractor's duties according to this Agreement.

**21. Indemnification of the County**

Contractor agrees to hold harmless, indemnify, and defend County and its “public employees” as defined in the New Mexico Tort Claims Act 41-4-1 through 41-4-29 NMSA 1978 against and from any and all claims, losses, demands, judgments, damages, liabilities, lawsuits, expenses, fees of attorneys, costs or actions of any kind or nature, whether from death, bodily injury or damage to property arising from or out of, connected with, resulting from or related to Contractor’s activities in connection herewith, including, but not limited to, any negligence or intentional acts or omissions of Contractor, employees, servants, agents, representatives, customers, invitees, patrons, contractors, subcontractors, successors, assigns, or suppliers, as well as all of the persons doing business with or receiving services from Contractor. Contractor’s agreement to hold harmless, indemnify, and defend County shall not be affected or terminate by cancellation, expiration of the term or renewal period or any other termination of this contract.

By entering into this Agreement, County and its “public employees” as defined in the New Mexico Tort Claims Act, *supra* do not waive sovereign immunity, do not waive any defenses and do not waive any limitations of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act, *supra*.

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions or any part of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to this Agreement to maintain any suit for wrongful death, bodily or personal injury, damage to property or any other matter whatsoever, pursuant to the provision of this Agreement.

**22. Invalid Term or Condition**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**23. Enforcement of Agreement**

A party’s failure to require strict performance of any provision of this Agreement shall not waive or diminish that party’s right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**24. Authority**

Individual(s) signing this Agreement on behalf of Contractor represents and warrants that he/she has the power and authority to bind Contractor, and that no further action, resolution or approval from Contractor is necessary to enter into a binding Agreement.

**25. Approval of Contractor Personnel**

Personnel proposed in Contractor's written proposal to County are considered material to any work performed under this Agreement. No changes of personnel will be made by Contractor without prior written consent of the procuring agency of County. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their productivity to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The procuring agency of County shall retain the right to request removal of any of Contractor's personnel at any time.

**26. Survival**

Articles titled Indemnification of the County and Succession of this Agreement shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

**27. Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

**28. Force Majeure**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

**29. Dispute Resolution**

The parties hereby agree to attempt to mediate any dispute to a resolution prior to filing litigation. In the event the parties are unable to settle their dispute through mediation, the parties shall be free to pursue any and all remedies available to them through appropriate judicial proceedings. Further, in the event either party is required to enforce the provisions of this Agreement through judicial proceedings, the prevailing party shall be entitled to reasonable attorney's fees and court costs from the non-prevailing party.

**30. Notice to Proceed**

It is expressly understood that this Agreement is not binding upon County until it is executed by the Board of County Commissioners after voting on the Agreement at a public meeting or unless it is executed by County Manager, if the amount of the Agreement is five thousand dollars (\$5,000.00) or less. Contractor is not to proceed with its obligations under this Agreement until Contractor has received a fully executed copy of the Agreement.

**31. Attorney's Fees**

In the event this Agreement results in dispute and/or litigation, and settlement is reached between the parties, the prevailing party of such action shall be entitled to an award of attorney's fees and court costs.

**32. Cooperation**

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

**33. Incorporation and Order of Precedence**

Request for Proposals Number \_\_\_\_\_ and Contractor's proposal are incorporated by reference into this Agreement and are made a part of this Agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Any Agreement amendment(s), in reverse chronological order; then
- B. This Agreement itself; then
- C. Request for Proposals Number \_\_\_\_\_; then
- D. Contractor's best and final offer(s), in reverse chronological order; then
- E. Contractor's proposal; then
- F. Contractor's standard agreement terms and conditions (which may or may not have been submitted as part of Contractor's proposal)

**34. Patent, Copyright, Trademark and Trade Secret Indemnification**

A. Contractor shall defend, at its own expense, County against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorney's fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against County based upon Contractor's trade secret infringement relating to any product or service provided under this Agreement, Contractor agrees to reimburse County for all costs, attorney's fees and the amount of the judgment. To qualify for such defense and/or payment, County shall:

- 1. give Contractor prompt written notice of any claim;
- 2. allow Contractor to control the defense or settlement of the claim; and
- 3. cooperate with Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in Contractor's opinion is likely to become the subject of a claim of infringement, Contractor shall at its option and expense:

- 1. provide a procuring agency of County the right to continue using the product or service;
- 2. replace or modify the product or service so that it becomes non-infringing; or
- 3. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to Contractor. Contractor's

obligation will be void as to any product or service modified by the procuring agency of County to the extent such modification is the cause of the claim.

**35. Future Reference (Post Review)**

Upon completion of all work and the Agreement is over, there will be a review of all work done by Contractor and/or any sub-contractors to be kept on file at County for future use to help ensure County chooses the best potential Offerors and Awardees.

**36. Construction**

This Agreement is jointly created and shall not be construed against either party for having drafted it or for having this Agreement drafted by such party's counsel.

**37. Notices**

Any notice required to be given by either party by this Agreement shall be in writing and shall be delivered in person, by courier services or by USPS mail, either first class or certified, return receipt requested, postage prepaid as follows:

**County**  
Lincoln County Manager  
P.O. Box 711  
Carrizozo, New Mexico 88301

**Contractor**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and signatures below.

**COUNTY:**

**CONTRACTOR:**

By: \_\_\_\_\_  
Nita Taylor, Manager  
County of Lincoln, New Mexico

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Rhonda Burrows, Clerk  
County of Lincoln, New Mexico

Date: \_\_\_\_\_